

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 477 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHAKEEL AHMED KHUDABAKSH SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/11/1999

ORAL JUDGEMENT

The petitioner came to be externed by an order passed on 12.3.99 by the Commissioner of Police, Ahmedabad, in exercise of powers under Section 56(B) of the Bombay Police Act from the area under Police Commissionerate and the area of Ahmedabad Rural District and districts of Gandhinagar, Kheda and Mehsana.

2. Earlier, on 7.4.95 notice under Section 59 of the Bombay Police Act came to be issued against the

petitioner. The allegations stated in the notice were that the petitioner, with the help of his associate, was engaged in extorting money from businessman trading in Mirzapur Mutton Market, Ratiyawadi and Delhi Chakla areas of Ahmedabad. That the petitioner used to intimidate and administer threat for extorting money, on those who refused to yield to his demands. Another allegation in the notice against the petitioner was that he is used to not paying for the goods which he used to extract from the businessman of Shahpur Mill Compound, Ratiyawadi and Khanpur areas of Ahmedabad. It was also alleged that he used to snatch money from the businessmen. The third allegation was that he uses automobiles but does not pay fare and if it is demanded by the operator he is beaten by the petitioner and is robbed. It was also stated that 2 offences vide Shahpur Police Station CR No. 305 of 1990 and Haveli Police Station C.No. 171/93 were registered against him.

3. The order passed on 12.3.99 states the three grounds stated in the notice and it is recorded by the Externment Authority in the order that the authority is subjectively satisfied that the petitioner is a dangerous person and is engaged in illegal activities since December 1994. The members of Public at large witnessing the illegal activities of the petitioner are afraid of him and are not prepared to publicly give evidence against the petitioner. It was also recorded that the petitioner is likely to operate from the adjoining districts and therefore he is required to be externed, also from the adjoining districts of Ahmedabad Rural, Gandhinagar, Kheda & Mahesana for a period of 2 years.

4. The externee preferred an appeal under Section 60 of the Bombay Police Act which came to be dismissed by an order dated 17.5.99 which has given rise to the present petition. The petitioner has assailed the order in question on various grounds, the main of which is that the order is belated and is based on stale incidents.

5. Mr.Tirmizi has restricted his arguments only on the ground of delay. He submitted that the notice came to be issued on 7.4.94 and the order in question came to be passed on 12.3.99 which is almost after a lapse of almost 4 years. He submitted that the order is silent about the cause of delay and it is only when the petition is filed an attempt is made to explain the delay by stating that the delay is caused because of the petitioner examining witness and seeking time in the externment proceedings. Mr.Tirmizi submitted that there also, if the statement accompanying the affidavit is

considered the last date mentioned is 5.5.98 and the order came to be passed on 12.3.99. According to Mr.Tirmizi, there is a delay of about 10 months which is not explained at all. Mr.Tirmizi has placed reliance on the decision in the case of Khemiben w/o Ishwarji Harchandji Thakore Vs. Deputy Police Commissiohner, Traffic Branch, Ahmedabad & Anr. reported in 1997 (2) GLH 473 and Balvantsinh V. Deputy Commissioner of Police, Vadodara & Anr. 1999(1) GLH 207 sbumitted that the petition may be allowed only on this ground.

6. Mr.H.H.Patel, Ld. APP appearing for the respondents submitted that the delay is well explained in the affidavit in para 4. He submitted tha delay is caused by the petitioner deliberately on one ground or other and the case was lingered on by the petitioenr which has caused no delay. There is no fault on part of the authority which can be considered as a ground for quashing the order. Mr.Patel has pressed into service the decision in the case of Babakhan alias Narsingh V. State of Gujarat reported in 1987 GLH 176 and submitted that delay is properly explained and therefore the petition may be dismissed.

7. There is a yawning gap of about 4 years between the date of issuance of notice and the passing of the order. The notice was issued on 7.4.95 and the order came to be passed on 12.3.99. The delay is not tried to be explained at all nor the cause for delay is recorded in the order for externment. An attempt is made to explain the delay by stating in Para 4 of the affidavit in reply as under:-

"4. So far as para 3B of the memo of the petition is concerned, it is submitted that these private witness who are 9 in number have stated the facts of their incidence in their statements. It is submitted that after the notice was served upon on 17.4.95, and on next day i.e.on 18.4.95, the petitioner has produced himself but thereafter, under the various reasons has given application for adjournments either for his self defence or for calling upon defence witness. Not only that, but many a times the petitioner did not remain present personally and thereby, either himself or through his wife or his mother or his advocate or his niece etc. gave an application for adjournments on the ground of sickness of any one of these people or on the ground of death of some relative or on the ground of being out of station, thereby, remaining absent on the date of

adjournments and thereby, did not produce his defence witness within the time limits only to see how to linger the legal proceedings."

The statement attached to the affidavit in reply indicates various dates on which the proceedings were conducted. The last such date is 5.5.98 there is no explanation coming forward from the respondents as to what happened between 5.5.98 and 12.3.99 this gap of about 10 months is not even tried to be explained. There is no question of therefore considering whether the delay is reasonably explained or not.

8. In the case of Babakhan (Supra) relied upon by Mr.H.H.Patel, Id. APP it was held that if delay is caused by certain adjournments in the externment proceedings, the externnee cannot take advantage of the delay that is caused because of his own conduct. In that case, in the externment proceedings over a period of about 9 months 29 adjournments were obtained by the externnee and the authority concerned gave full and reasonable opportunity to the proposed externnee. In the instant case, if it is accepted that the proposed externnee had asked for time from time to time in the externment proceedings then also the extention is only upto 5.5.1998. Thereafter also there has been a delay of about 10 months which is not explained at all. In this regard a recent decision of this Court in the case of Balvantsingh (Supra) rendered in 1999 (1) GLH 207 may be considered. In that case also delay of about 9 months was also not explained by the Externment Authority and the order of externment came to be quashed. This Court while delaing with the argument of delay also took into consideration the decision of Mr.Babubhai M Shaikh Vs. The State of Gujarat reported 1978 (1) GLR 574. In an earlier decision also this Court, considered the question of delay, while deciding the case of Khemiben wife of Ishwarji Harchand Thakore Vs. Inspector of Traffic Police, Ahmedabad reported in 97 (2) GLH 473. In that case the Court came to a conclusion that the order of externment passed on 21.3.96 and the appeal which came to be decided on 16.7.96, deserved to be quashed and set aside on the count of delay, where a period of about six months lapsed between the examination of the last witness and passing of the final order of externment. The order was therefore quashed and set aside.

9. Thus the present petition must succeed on the ground of delay in passing of the order alone and therefore the petition is allowed. The order of externment passed on 12.3.1999 and the order in appeaal

passed on 17.5.1999 are both quashed and set aside. Rule made absolute. No costs.

(A.L.Dave, J)

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